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Anna G. Bradshaw*

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TRANSCRIPT OF PROCEEDINGS

APR 13 1994

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

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IN THE MATTER OF:

MM DOCKET NO. 93-299

CAVAN COMMUNICATIONS CORPORATION

Presque Isle, Maine

24 DATE OF HEARING: March 24, 1994

VOLUME: 3

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FREE STATE REPORTING, INC.
Court Reporting Depositions
D.C. Area (301) 261-1902
Balt. & Annap. (410) 974-0947

APR 13 1994

Before the
FEDERAL COMMUNICATIONS COMMISSIONWashington, D.C. 20554 FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY-----
In the matter of:)

CAVAN COMMUNICATIONS CORPORATION)

MM DOCKET NO. 93-299)

Presque Isle, Maine)

The above-entitled matter came on for hearing pursuant to Notice before Edward Luton, Administrative Law Judge, at 2000 L Street, N.W., Washington, D.C., in Courtroom No. 3 on Thursday, March 24, 1994, at 9:30 a.m.

APPEARANCES:

On behalf of CAVAN Communications, Inc.:

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Dow, Lohnes & Albertson
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On behalf of Mass Media Bureau:

GARY SCHONMAN, Esquire
Mass Media Bureau
2025 M Street
Washington, D.C. 20554

1	I N D E X				
2	<u>Witness</u>	<u>Direct</u>	<u>Cross</u>	<u>Redirect</u>	<u>Recross</u>
3	J. Dominic Monahan				
4	By Mr. Hutton	30			
5	By Mr. Schonman		50		
6	By Mr. Hutton			112	
7					
8	<u>E X H I B I T S</u>				
9		<u>Identified</u>	<u>Received</u>	<u>Rejected</u>	
10	<u>Mass Media Bureau</u>				
11	Exhibits No. 1-18	14	26		
12					
13	<u>Cavan Communciations</u>				
14	Exhibit No. 1	35	49		
15	Attachments A-L				
16	Attachments N-O				
17					
18					
19					
20					
21					
22					
23					
24	Hearing Began: 9:30 a.m.		Hearing Ended: 2:12 p.m.		
25	Lunch Break Began: 12:25 p.m.		Lunch Break Ended: 1:35 p.m.		

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P R O C E E D I N G S

MR. SCHONMAN: Your Honor, at this time the Bureau would like to have several documents marked for identification. And please let the record reflect that I've given the court reporter two copies of the exhibits. The first exhibit -- well, before I start should I identify all of them or would you like me to do one at a time?

JUDGE LUTON: Identify all of them.

MR. SCHONMAN: Mass Media Bureau No. 1 is a letter dated March 17, 1991, from CAVAN to the FCC requesting authority for station WTMS-AM to remain silent. That's one page. Mass Media Bureau Exhibit No. 2 is a letter dated May 23, 1991, from the FCC to CAVAN granting silent status for WTMS through August 23, 1991. That's a one-page document. Mass Media Bureau Exhibit 3 is a letter dated February 28, 1992, from the FCC to CAVAN advising that WTMS-AM is silent without authority and requesting a response within 30 days. That's a three-page document. Bureau Exhibit No. 4 is a letter dated March 11, 1992, from CAVAN to the FCC requesting further authority for WTMS-AM to remain silent. That's two pages in length. Bureau Exhibit No. 5 is a letter dated April 10, 1992, from the FCC to CAVAN granting silent status for WTMS through July 10, 1992. That's a two-page document. Bureau Exhibit No. 6 is a letter dated July 10, 1992, from CAVAN to the FCC requesting further authority for WTMS-AM to

1 remain silent. That's a one-page document. Bureau Exhibit
2 No. 7 is a letter dated July 23, 1992, from the FCC to CAVAN
3 deferring action on a request for further silent status
4 pending receipt from CAVAN of an anti-drug abuse
5 certification. That's one page. Bureau Exhibit No. 8 is a
6 letter dated August 20, 1992, from CAVAN to the FCC providing
7 an anti-drug abuse certification. That's two pages. Bureau
8 Exhibit No. 9 is a letter dated October 23, 1992, from CAVAN
9 to the FCC providing a copy of a previously filed Anti-Drug
10 Abuse Act certification. That's one page. Bureau Exhibit
11 No. 10 is a letter dated October 30, 1992, from the FCC to
12 CAVAN granting further authority for WTMS-AM to remain silent
13 through January 30, 1993. That's one page. Bureau Exhibit
14 No. 11 is a letter dated February 18, 1993, from the FCC to
15 CAVAN advising that WTMS-AM is silent without authority and
16 requesting a response within 30 days. That's a three-page
17 document. Bureau Exhibit No. 12 is a letter dated March 12,
18 1994 (sic), from CAVAN to the FCC requesting further authority
19 for WTMS-AM to remain silent. That's two pages in length.
20 Bureau Exhibit No. 13 is a letter dated March 30, 1993, from
21 the FCC to CAVAN granting authority for WTMS-AM to remain
22 silent through June 30, 1993. That's two pages. Bureau
23 Exhibit No. 14 is a letter dated July, July 26, 1993, from the
24 FCC to CAVAN advising that WTMS-AM is silent without authority
25 and requesting a response within 30 days. That exhibit is

1 three pages long. Bureau Exhibit No. 15 is an owner -- is --
2 consists of ownership information relating to CAVAN. That
3 exhibit runs 10 pages. Bureau Exhibit No. 16 is a letter
4 dated March 7, 1994, from CAVAN to the FCC requesting an STA,
5 that's two pages long. Bureau Exhibit No. 17 is a letter
6 dated March 9, 1994, from the FCC to CAVAN granting CAVAN an
7 STA. That exhibit is one page. And finally, Bureau Exhibit
8 No. 18 is an FCC Form 302 submitted by CAVAN on March 22,
9 1994, and that exhibit runs 13 pages. And at this time I --
10 well, you haven't marked them.

11 JUDGE LUTON: They will be marked Bureau Exhibits 1
12 through 18 for identification.

13 (Whereupon, the documents referred to
14 as MMB Exhibits 1 through 18 were
15 marked for identification.)

16 MR. SCHONMAN: Thank you, Your Honor, and at this
17 time the Bureau would request that these exhibits be received
18 into the record.

19 JUDGE LUTON: The exhibits appear to consist mostly
20 of correspondence, not entirely, but mostly correspondence
21 between the FCC and CAVAN. Any objection to any of these
22 offerings by CAVAN?

23 MR. HUTTON: Yes, Your Honor.

24 JUDGE LUTON: All right.

25 MR. HUTTON: I have one single objection to Exhibits

1 1 through 12. And is that the hearing designation order in
2 this case very specifically relates that the authority to
3 remain silent was granted through June 30th, 1993, by letter
4 dated March 30th, 1993, from the chief of the AM Branch.
5 Thereafter, by letter dated July 26, 1993, the chief of the AM
6 Branch wrote CAVAN stating that Commission records show that
7 the station was off the air without authority and required
8 CAVAN to request an extension of its silent authority or to
9 return the station's authorization. Exhibits 1 through 12 all
10 appear to relate to a prior period of time and they appear to
11 go beyond the scope of the hearing designation order and I
12 would object on that ground.

13 MR. SCHONMAN: Your Honor, if I can respond, please?

14 JUDGE LUTON: Yes, please.

15 MR. SCHONMAN: Your Honor, the first issue in the
16 hearing designation order -- I'm sorry, the second issue in
17 the hearing designation order asks you to determine whether
18 CAVAN has violated certain, certain rule sections, that is,
19 Section 73.1740 and/or Section 73.1750 and the exhibits that
20 CAVAN now objects to relate directly to whether CAVAN violated
21 those sections of the rules. So, they are directly responsive
22 to the hearing designation order and certainly relevant to the
23 designated issues.

24 JUDGE LUTON: All right. The two issues that are --
25 that we're concerned with, the two rules, rather, are 73.1740

1 and 50.

2 MR. HUTTON: Your Honor, if I may comment.

3 JUDGE LUTON: Excuse me. Let me go on through this.
4 Mr. Schonman, you gave a fairly general statement of relevance
5 here. You simply put that a couple of rules are in issue and
6 then you claimed that the offerings are directly relevant to
7 those issues but you don't tell me how.

8 MR. SCHONMAN: All right. I, I can certainly do
9 that, Your Honor. Rule 1740 relates to the notification that
10 a licensee must give when it remains silent for a certain
11 period of time, and 1750 relates to whether a licensee has
12 permanently discontinued its operations. Now, the documents
13 in question, numbers 1 through 12 is it --

14 JUDGE LUTON: Yes.

15 MR. SCHONMAN: -- counsel? Those documents consist
16 essentially as you have said of correspondence through the
17 years relating to the station's silent status. And I think
18 upon examination of the witness it will be shown through these
19 documents that CAVAN in fact violated at least Section 73.1740
20 on several occasions.

21 MR. HUTTON: Your Honor, though the point is --

22 JUDGE LUTON: Is that what -- excuse me. Is that
23 what CAVAN is being charged with in the, the designation
24 order?

25 MR. SCHONMAN: Yes, there are two separate issues

1 here. Number one, to determine whether the station -- to
2 determine whether CAVAN can get the station back on the air.
3 And the second issue is to determine whether they have
4 violated either or both of these two specific rule sections.

5 JUDGE LUTON: Well --

6 MR. SCHONMAN: And these documents will show that
7 CAVAN has violated at least Section, Section 73.1740.

8 JUDGE LUTON: But over what period of time? The
9 entire history of the station, even concerning those instances
10 in which CAVAN apparently was notified by the FCC that it had
11 gone silent without authority, then a request comes in for an
12 extension of silent authority and it was subsequently granted?
13 The designation order is looking back at that kind of activity
14 and seeking to conclude or have the conclusion drawn that even
15 though authority was extended CAVAN nevertheless violated the
16 section? Is that the way you're viewing this?

17 MR. SCHONMAN: Yes. When, when the Commission
18 granted the further extensions of time in each case, the
19 Commission was not passing on whether CAVAN had violated those
20 rule sections. This HDO and the specification of these issues
21 doesn't state that we are restricted merely to the most recent
22 incident when, when CAVAN was silent without authority. We
23 submit that it relates back to the, to the history of this
24 station since it went silent. And I think in, in addition I
25 might add, Your Honor, in paragraph eight there is a provision

1 that directs you to determine whether a -- I'm sorry,
2 paragraph seven directs you to determine whether a forfeiture
3 should be imposed. And I would submit additionally that
4 evidence of past violations if in fact it establishes a
5 pattern of violations of the Commission's rules is relevant to
6 determining the extent to which a forfeiture should be
7 imposed. That is, how much. So, it's relevant certainly
8 towards that as well.

9 JUDGE LUTON: Mr. Schonman, what do you think it
10 meant when the Commission after having alerted CAVAN on
11 several occasions apparently that it had gone silent without
12 authority, then the Commission extended -- granted authority
13 for that silent status? Just what was embraced by that
14 authority? What did that mean? It meant -- well, you tell
15 me. What do you think it meant?

16 MR. SCHONMAN: Well, it doesn't -- it does not mean
17 that the Commission passed on the qualifications of CAVAN to
18 remain a licensee, and there was no issue there as to whether
19 CAVAN had violated the Commission's rules. The request was
20 made to the Commission that CAVAN remain silent for a further
21 period of time based on a showing that CAVAN provided at that
22 time and in each instance, this Commission staff made a
23 determination that the showing was satisfactory and that a
24 further extension to remain silent should be granted. The
25 Commission did not pass at that time on whether there had been

1 a violation. That's the issue now that we have to determine.

2 JUDGE LUTON: But the Commission granted authority.
3 Authority for what? To do what?

4 MR. SCHONMAN: To remain silent for a further period
5 of time in each instance.

6 JUDGE LUTON: And in granting that authority to
7 remain silent, the Commission now is in your view turning
8 around and saying that our grant of authority to remain silent
9 meant something less than the slate was wiped clean, so to
10 speak, with respect to earlier apparent violations?

11 MR. SCHONMAN: Well, Your Honor, when the staff
12 granted in each instance a further authority to remain silent,
13 the staff was not examining the entire slate. It was merely
14 examining the showing that CAVAN had made in each instance as
15 to whether that showing was satisfactory for a grant to remain
16 silent. That's all the Commission was determining at that
17 time: is the showing satisfactory, should the station be
18 allowed to remain silent? It was not examining the whole
19 slate, it was not examining the, the overall qualifications of
20 the licensee to remain licensee. That's what we are doing
21 right now. That's the purpose of this hearing.

22 JUDGE LUTON: Okay. Mr. Hutton?

23 MR. HUTTON: Your Honor, as a matter of due process,
24 CAVAN can only be required to defend itself on the matters set
25 forth in the hearing designation order. The hearing

1 designation order in paragraph two recites the events
2 concerning the letter of June 30th, 1993 and the letter of
3 July 26, 1993. And then paragraph three states, and I quote,
4 "Inasmuch as CAVAN has neither requested an extension of its
5 silence authority nor demonstrated that causes beyond its
6 control prevent it from resuming broadcast operations, CAVAN
7 is in apparent violation of Section 73.1749(a)(4) of the
8 Commission's rules," and the footnote recites the rule
9 section. And now it goes -- clearly goes beyond the scope of
10 the hearing designation order to reach back into the prior
11 history as Mr. Schonman is attempting to do.

12 MR. SCHONMAN: Your Honor, the Bureau is not
13 attempting to go beyond the hearing designation order. The
14 issue, issue 4-B, states to determine whether CAVAN
15 Communications Corporation has violated those particular rule
16 sections. These exhibits which I am attempting to move into
17 evidence go directly to that. The language in the HDO, the
18 discussion, the narrative, doesn't restrict the issue. And in
19 addition, as I've stated before, the additional violations
20 that precede the narrative in the HDO will establish a pattern
21 of violations by CAVAN. In that regard, they're relevant on
22 that basis. The determination as to whether there were
23 violations beginning in 1991 and henceforth have never been
24 decided. That's what we're here for today.

25 JUDGE LUTON: So, because of the forfeiture language

1 and some reference to the possibility of repeated violations,
2 the Bureau takes the position that something more than just
3 the most recent silence is in issue here? That since the HDO
4 apparently comprehends a pattern of violations, the only way
5 that can be shown is to go back over the station's long
6 history?

7 MR. SCHONMAN: That's correct. In assessing whether
8 a forfeiture should be imposed and the amount of that
9 forfeiture, we, we have to look back and see --

10 JUDGE LUTON: Yeah.

11 MR. SCHONMAN: -- whether there have been
12 violations.

13 JUDGE LUTON: Okay. I think I understand. There
14 may be some ambiguity in the designation order. However, I
15 must say I, I find it difficult to, to concur with the
16 Bureau's reading of the designation order. I certainly hadn't
17 read it that way. Mr. Hutton, let me ask you this. I notice
18 that in the exhibits that CAVAN proposes to submit there is a
19 considerable narrative about the steps that it took from day
20 one. Would you consider that material to be as irrelevant as
21 the material to which you are now objecting?

22 MR. HUTTON: No, Your Honor. That material relates
23 to the other issue in the, in the proceeding which is whether
24 or not CAVAN violated Section 73.1750 requiring the licensee
25 of a station to notify the FCC of permanent discontinuance of

1 operation. That material is offered to show that there never
2 was any intent to permanently discontinue operation. It
3 recites the history of financial problems at the station and
4 operational difficulties and it's offered to show that there
5 never was any permanent discontinuance of operation.

6 JUDGE LUTON: But even so, it goes beyond what you
7 were claiming to be a matter of due process here. Namely,
8 that our only concern ought to be that the -- is it the, the
9 letter from the AM Branch on July 26, 1993, to which according
10 to the HDO CAVAN has made no response? Now, you don't --
11 you're not now viewing the hearing designation order to
12 concern itself solely with that matter?

13 MR. HUTTON: Well, I think on the, on the issue of
14 whether or not CAVAN violated Section 73.1740 which requires a
15 licensee to obtain the Commission's consent to remain silent
16 beyond a certain period. The HDO I think is fairly clear that
17 the period in, in question is from June 30th forward. But the
18 material in the CAVAN exhibit relating to the entire history
19 of the -- of CAVAN's operation of the station is offered more
20 in connection with Section 73.1750 which requires a licensee
21 that is permanently discontinuing operation to turn the
22 license in to the FCC. The, the, the material in question in
23 our exhibits shows the history of the, of the station. In
24 part, it contains material that's relevant to whether or not a
25 forfeiture is appropriate or the size of a forfeiture. But it

1 centers on whether or not there was ever any intent to
2 permanently discontinue operation which there was not.

3 JUDGE LUTON: Well, that -- isn't that somewhat
4 self-evident since CAVAN continued to seek and was granted
5 extensions of authority to remain silent? Seems to me CAVAN
6 is doing the same thing that the Bureau is doing except that
7 when it happens to, to, to CAVAN --

8 MR. HUTTON: Well, if Mr. Schonman wants to object
9 to --

10 JUDGE LUTON: -- there's an objection. I don't know
11 whether Mr. Schonman wants to object or not. I'm, I'm just
12 doing this in an effort to try to understand the parties'
13 views of the case so that I can be assisted in making my
14 rulings.

15 MR. SCHONMAN: Your Honor?

16 JUDGE LUTON: Yes?

17 MR. SCHONMAN: Since CAVAN had not yet marked for
18 identification its exhibit I was not offering my comments on
19 its exhibit. But --

20 JUDGE LUTON: I raised the matter.

21 MR. SCHONMAN: -- it's now in the forefront and the
22 Bureau had intended to object to large portions of the
23 narrative statement.

24 JUDGE LUTON: Fine. It doesn't, doesn't matter.
25 The question was in my mind after we talked about the Bureau's

1 objections and it seems to me that the -- that CAVAN is
2 intending to act somewhat inconsistently with its objections
3 to the Bureau's offering 1 through 12. I'm going to have
4 to --

5 MR. SCHONMAN: Your Honor, may I make one more --

6 JUDGE LUTON: Yes, sir --

7 MR. SCHONMAN: -- statement?

8 JUDGE LUTON: -- go ahead.

9 MR. SCHONMAN: I believe the, the items which the
10 Bureau has offered which CAVAN is objecting to, Exhibits No. 1
11 through 12, those are as I understand it for the most part --
12 which is in the, which is in the record, the, the official
13 record, which, which notice may be taken of.

14 JUDGE LUTON: Well, I --

15 MR. HUTTON: Well, that's the point. We don't, we
16 don't believe official notice should be taken and we don't
17 believe it should be taken into consideration in the decision
18 because as a matter of due process the hearing designation
19 order relates to a later period of time.

20 MR. SCHONMAN: Well, that's a, that's a position
21 that CAVAN has expressed and certainly I've commented on and I
22 do not agree with that.

23 JUDGE LUTON: And CAVAN's proposed exhibits will
24 indicate something different as well. I'm going to accept
25 1 through 12 along with the remainder of the exhibits. I

1 break out 1 through 12 because of the objection that was made.
2 I'm not certain how I'm going to treat this kind of evidence
3 in, in the decision quite frankly. I'm faced with a new way
4 perhaps to read the hearing designation order this morning and
5 so I'll have to give that some more thought. I might as well
6 go ahead and say now, Mr. Schonman, since you had planned to
7 object to some of CAVAN's exhibits, to the extent that those
8 objections would be on the basis that we have now talked
9 about, I'm going to just overrule them in advance and, and
10 whatever additional objections you might have I'll rule on
11 them in turn. In other words, to the extent that the Bureau
12 had intended to argue that CAVAN's proposed offerings are
13 irrelevant because they deal with this prior period of time.
14 I don't even know if the Bureau is going to make that
15 argument, but if, but if it intended to make that argument,
16 I'm going to overrule it now so as to be consistent with the
17 ruling that I've just made on CAVAN's -- on, on the Bureau's
18 exhibits. Did you follow that?

19 MR. SCHONMAN: Well, I think I do. I do have --

20 JUDGE LUTON: Kind of, kind of, sort of?

21 MR. SCHONMAN: Well, I --

22 JUDGE LUTON: If you have different objections,
23 that's fine.

24 MR. SCHONMAN: I do.

25 JUDGE LUTON: All right. I'm, I'm certainly not

1 ruling on those in advance. So, 1 through 18 are received.

2 (Whereupon, the documents referred to
3 as MMB Exhibits No. 1 through 18,
4 previously identified, were received
5 into evidence.)

6 JUDGE LUTON: And again, I'll say that I continue to
7 have some reservations about the relevance of 1 through 12.
8 All right, Mr. Schonman?

9 MR. SCHONMAN: That consists of the Bureau's
10 exhibits.

11 JUDGE LUTON: That's the Bureau's direct case?

12 MR. SCHONMAN: Yes.

13 JUDGE LUTON: So, Mr. Hutton?

14 MR. HUTTON: Your Honor, before Mr. Monahan takes
15 the stand, I'd like to provide some supplemental information
16 similar to what Mr. Schonman offered. There are three items
17 in question. One is marked as supplement to attachment N of
18 hearing exhibits. It consists of financial information that
19 was produced to the Bureau in discovery but was not exchanged
20 with the hearing exhibits on March 1. It covers -- it's
21 financial information for the year 1992 which was not included
22 in the original attachment N and it includes CAVAN's tax
23 returns for the years 1991 through 1993. The second item is
24 what we have marked as CAVAN attachment O. It's a March 11th,
25 1994 letter from the FCC granting a call sign change to the

1 station. The call sign had been WTMS. Effective March 18th,
2 1994, the call sign was changed to WEGP and this attachment
3 reflects that. The third item is marked as revised attachment
4 K. Attachment K consisted -- the original attachment K in the
5 hearing exhibit consisted of a local marketing agreement
6 between CAVAN and Lobster Radio Network, Inc., and that was
7 dated January 22nd, 1994. The reviewed attachment K is
8 another version of that agreement. It's dated March 23rd,
9 1994, and there are two changes to the agreement. It changes
10 the commencement date to April 1, 1994 and it also changes the
11 language of the termination provision in response to a request
12 from the Bureau personnel who had expressed concern over the
13 original termination provision of the local marketing
14 agreement. I'd like to provide copies of those documents now
15 to the court reporter and to yourself and to
16 Mr. Schonman, or I have provided them to Mr. Schonman.

17 MR. SCHONMAN: Your Honor, I'd like to make a
18 comment for the record. I'd like the record to reflect that
19 Bureau counsel received its copy of the supplement to
20 attachment N just minutes before the commencement of this
21 hearing. Therefore, any documents which are included in this
22 supplement which were not previously provided to the Bureau in
23 the Bureau exchange the Bureau had no understanding that those
24 documents were to be moved into evidence today or marked for
25 identification. To that extent, the Bureau has not had the

1 opportunity to thoroughly review these documents so I believe
2 in that regard the Bureau is at a disadvantage. It is
3 essentially reviewing these documents for the first time for
4 the purpose of this hearing.

5 JUDGE LUTON: How many documents are we talking
6 about?

7 MR. SCHONMAN: I'm sorry?

8 JUDGE LUTON: How many documents are we talking
9 about here which --

10 MR. SCHONMAN: Well, I haven't had the opportunity
11 to evaluate this supplement. I don't know the extent to which
12 this supplement differs from the original attachment N.

13 JUDGE LUTON: This is the supplement to attachment N
14 you're talking about?

15 MR. SCHONMAN: Right.

16 MR. HUTTON: Your Honor, let me clarify something.
17 This is simply a supplement. It does not replace any of the
18 information contained in Exhibit N which was exchanged
19 originally on March 1. Also, I recognize that while these
20 documents were not exchanged with the exhibit exchange, they
21 were produced to Bureau counsel in the course of discovery in
22 this proceeding.

23 JUDGE LUTON: Well, that may be so, but counsel is
24 certainly entitled to a fair opportunity to review the
25 materials that are sought to be offered up at hearing. I can

1 recess the hearing, Mr. Schonman, and give you an opportunity
2 to review the documents and we'll come back later on today.

3 MR. SCHONMAN: Well, Your Honor, I'm not suggesting
4 that. I think what --

5 JUDGE LUTON: I know. I'm suggesting that.

6 MR. SCHONMAN: Well, the Bureau would like to see
7 the hearing go forward as scheduled. I think if there comes a
8 time when we take a break for lunch I think the Bureau can
9 review these documents. I don't know what you had in mind,
10 Your Honor, in terms of, of suspending the hearing for what
11 period of time.

12 JUDGE LUTON: Enough time for you to review the
13 documents. Well, if you would rather not, I mean, you know,
14 you made a complaint and I'm simply trying to respond to it.
15 If you --

16 MR. SCHONMAN: Your Honor, I appreciate --

17 JUDGE LUTON: -- want to go ahead we'll go ahead.

18 MR. SCHONMAN: I'd like to go ahead. I think it was
19 more of an observation by the Bureau.

20 JUDGE LUTON: All right.

21 MR. SCHONMAN: I can ask the witness questions about
22 it as we go along.

23 JUDGE LUTON: We'll go ahead.

24 MR. SCHONMAN: That would be the more expeditious
25 manner. I was merely pointing out the observation that, that

1 the Bureau was at somewhat of a disadvantage having not
2 examined these documents in contemplation of using them at the
3 hearing.

4 JUDGE LUTON: All right. We'll go ahead.
5 Whereupon,

6 J. DOMINIC MONAHAN
7 having first been duly sworn, was called as a witness herein
8 and was examined and testified as follows:

9 DIRECT EXAMINATION

10 BY MR. HUTTON:

11 Q Will you state your name for the record, please?

12 A Yes. J. Dominic Monahan.

13 Q And what is your connection with CAVAN
14 Communications Corporation?

15 A I am a officer and a director of the company and I
16 hold I believe it's a 45 percent stockholder interest in it.

17 MR. HUTTON: Your Honor, I would like to have marked
18 for identification CAVAN Communications Corporation Exhibit
19 No. 1, consisting of the testimony of Mr. Monahan and
20 including attachments A through O and I can identify the
21 attachments particularly if you would like.

22 JUDGE LUTON: Please do.

23 MR. HUTTON: Attachment A consists of a two-page
24 letter from Sales Management Systems, Inc., dated August 24th,
25 1993, and addressed to Mr. Monahan. Attachment B consists of

1 four documents. The first is a October 28th, 1991 letter from
2 Mr. Monahan to Melvin L. Stone. That's a five-page letter.
3 The second is a one-page document entitled "Authorization,"
4 and it's executed by Mr. Monahan on behalf of CAVAN
5 Communications Corporation on October 11th, 1991 and executed
6 by Mr. Kozacko or Kozacko-Horton Company on November 5th,
7 1991. The next document is a two-page letter from Mr. Monahan
8 dated December 17th, 1991, addressed to Mr. Don Flewelling.
9 And the final document in that attachment is a January 30th,
10 1992 letter from Mr. Monahan to Mr. Flewelling. Attachment C
11 consists of a February 12th, 1992 letter from Mr. Monahan to
12 Mr. Brian Lamont. That's a five-page letter. Attachment D
13 consists of two documents. The first is an April 1, 1992
14 letter from Timothy Dr. Martz of Four Seasons Communications,
15 Inc., to CAVAN Communications, Inc. That's a one-page letter.
16 And the second document is an April 1, 1992 letter from
17 Mr. Martz of Four Seasons Communications, Inc. It's a letter
18 agreement that was executed by him including handwritten
19 notations and it's a five-page letter. Attachment E contains
20 three documents. The first is a fax transmittal page from
21 Mr. Martz to Mr. Monahan with handwritten notations. The date
22 of that is May 5th, 1992. This is followed by a two-page
23 option agreement with handwritten notations, not signed, dated
24 September 1992. And the final document there is a fax
25 transmittal page dated April 1, 1992, from Mr. Martz to

1 Mr. Monahan.

2 WITNESS: Your Honor, if I may interject. I see
3 some confusion there. I think that last page we just referred
4 to, the April 1 transmittal cover sheet, may have been just
5 misplaced. I think that was the cover sheet which should have
6 been associated with the previous document from Mr. Martz
7 dated April 1, I believe the sheet that accompanied it. And
8 it would, it would -- right after the cover page, say in
9 attachment D, I think that's where that should be inserted. I
10 think that's what -- it just, it just got out of sync with the
11 rest of the documents.

12 JUDGE LUTON: Right after attachment D?

13 WITNESS: Yeah, after this cover sheet, Your Honor
14 --

15 JUDGE LUTON: Yes.

16 WITNESS: -- then the next page would be the, the --

17 MR. HUTTON: The next document is marked as
18 attachment E-A. It's a one-page letter from Richard L.
19 Kozacko to Mr. Monahan dated May 4th, 1992. Attachment F
20 consists of three documents. The first is a two-page letter
21 from Mr. Monahan dated April 12th, 1993 to Mr. Timothy Martz.
22 The second is a unsigned memorandum of understanding from
23 Mr. Monahan to Mr. Martz, it's three pages, and it's dated
24 March 24th, 1993.

25 JUDGE LUTON: Four pages?

1 MR. HUTTON: Excuse me. Let's see. Yes, excuse,
2 me, four pages. And the final document is another unsigned
3 four-page memorandum of understanding from Mr. Monahan to
4 Mr. Martz. It's dated March 16th, 1993. Attachment G
5 consists of one document. It's a three-page letter from
6 Mr. Monahan to Mr. Walter L. Kitemeyer, and Mr. Keith L.
7 Fornal, and that's dated September 14th, 1993. Attachment H
8 is a December 14th, 1993, one-page letter from Mr. Kitemeyer
9 to Mr. Monahan. Attachment I is a two-page letter from
10 Mr. Monahan to Mr. Michael Tibbits, dated September 22nd,
11 1993. Attachment J is a three-page letter from Mr. Monahan
12 dated August 26, 1993, to the Federal Communications
13 Commission with notations indicating via facsimile
14 transmission and first class mail directed to the attention of
15 Charlene Lofty. Attached to that letter is a one-page Anti-
16 Drug Abuse Act certification. Also attached is a two-page
17 unsigned letter from Kevin Schmursal, president of Sales
18 Management Systems, Inc., to Mr. Monahan dated August 24th,
19 1993. Attached to that are copies of telephone and fax
20 records, two pages. And attached to that is a one-page
21 declaration from Ms. Julie Grumbley dated December 8, 1993.
22 Attachment K is the local marketing agreement. As indicated,
23 we have provided today to Your Honor and to the court reporter
24 and to Mr. Schonman a revised attachment K which is a 12-page
25 local marketing agreement between CAVAN and Lobster Radio